

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-7658

BRIAN PETER ZATER,

Plaintiff - Appellant,

versus

UNITED STATES OF AMERICA,

Defendant - Appellee.

No. 03-6273

BRIAN PETER ZATER,

Petitioner - Appellant,

versus

UNITED STATES OF AMERICA,

Respondent - Appellee.

Appeals from the United States District Court for the District of South Carolina, at Columbia. Dennis W. Shedd and Henry M. Herlong, Jr., District Judges. (CR-00-626, CA-02-958-3-19, CA-02-958-3-20)

Submitted: May 15, 2003

Decided: May 20, 2003

Before LUTTIG and KING, Circuit Judges, and HAMILTON, Senior
Circuit Judge.

Dismissed by unpublished per curiam opinion.

Brian Peter Zater, Appellant Pro Se. Stacey Denise Haynes, OFFICE
OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

In these consolidated appeals, Brian Peter Zater seeks to appeal the district court's orders denying relief on his motion filed under 28 U.S.C. § 2255 (2000).

In No. 02-7658, Zater seeks to appeal the district court's order adopting the report and recommendation of the magistrate judge and dismissing the portion of his § 2255 motion alleging ineffective assistance of counsel based on counsel's failure to file a direct appeal. This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (2000), and certain interlocutory and collateral orders, 28 U.S.C. § 1292 (2000); Fed. R. Civ. P. 54(b); Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541 (1949). The order Zater seeks to appeal is neither a final order nor an appealable interlocutory or collateral order. Accordingly, we deny leave to proceed in forma pauperis and dismiss the appeal for lack of jurisdiction.

In No. 03-6273, Zater seeks to appeal the district court's order dismissing the remainder of Zater's claims under § 2255. An appeal may not be taken from the final order in a § 2255 proceeding unless a circuit justice or judge issues a certificate of appealability. See 28 U.S.C. § 2253(c)(1) (2000). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that reasonable

jurists would find that his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 123 S. Ct. 1029, 1040 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683 (4th Cir.), cert. denied, 534 U.S. 941 (2001). We have independently reviewed the record and conclude that Zater has not made the requisite showing. Accordingly, we deny leave to proceed in forma pauperis, deny a certificate of appealability, and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED